

Assembly Bill No. 2327

Passed the Assembly August 12, 2010

Chief Clerk of the Assembly

Passed the Senate August 5, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Division 4 (commencing with Section 13900) to the Insurance Code, relating to risk pools.

LEGISLATIVE COUNSEL'S DIGEST

AB 2327, Harkey. Affordable housing: risk retention pool.

Existing law authorizes local agencies to enter into a joint pooling agreement to form a single statewide insurance pooling arrangement for the payment of tort liability or public liability losses incurred by those agencies.

This bill would authorize an affordable housing entity, defined to include affordable housing entities that are created under the laws of another jurisdiction or organized under the laws of another state, to join with one or more affordable housing entities in an arrangement providing for the pooling of self-insured claims or losses, as specified. The pool would be authorized to be organized as a nonprofit corporation, limited liability company, partnership, or trust, whether organized under the laws of this state or another state or operating in another state. The pool would be required to furnish a copy of the pool's audited financial statement and most recent actuarial review to specified legislative committees within 180 days of the close of the pool's fiscal year and, if specified events have occurred since the last statement and review was submitted, the pool would be required to so indicate and provide a brief description of each occurrence. The bill would prohibit the pooling arrangement from being considered insurance or being subject to regulation under the Insurance Code, and would require written notice to be given as specified.

The people of the State of California do enact as follows:

SECTION 1. Division 4 (commencing with Section 13900) is added to the Insurance Code, to read:

DIVISION 4. AFFORDABLE HOUSING ENTITIES RISK
RETENTION POOL

13900. An affordable housing entity may join with one or more other affordable housing entities in an arrangement providing for the pooling of self-insured claims or losses with respect to any of the following:

- (a) Insurance covering all or any part of any tort liability.
- (b) Insurance covering any employee of the affordable housing entity against all or any part of his or her liability for injury resulting from an act or omission in the scope of employment.
- (c) Insurance covering any board member, officer, partner, manager, member, or volunteer of the affordable housing entity against any liability that may arise from any act or omission in the scope of participation with the affordable housing entity.
- (d) Insurance covering any loss arising from physical damage to motor vehicles, personal property, real property, or other property owned or operated by the affordable housing entity.

13901. (a) The pooling arrangement established pursuant to this division shall not be considered insurance, and shall not be subject to regulation under this code.

(b) All affordable housing entities participating in a pooling arrangement established pursuant to this division shall be given written notice, in at least 10-point type, that the pool is not regulated by the Insurance Commissioner and that the state insurance insolvency guaranty funds are not available to safeguard its risk.

13902. (a) Any insurance pool, established pursuant to this division, may be organized as a nonprofit corporation, limited liability company, partnership, or trust, whether organized under the laws of this state or another state or operating in another state.

(b) Any insurance pool established pursuant to this division shall have initial pooled resources of not less than two million five hundred thousand dollars (\$2,500,000) in the form of cash or cash equivalents.

(c) Any insurance pool established pursuant to this division shall maintain adequate reinsurance to protect against its risks.

(d) Any insurance pool established pursuant to this division shall furnish a copy of the pool's annual audited financial statement and most recent actuarial review, by first-class mail or by any other

method of delivery, including electronic transmission, to the Assembly Committee on Housing and Community Development, the Assembly Committee on Insurance, the Senate Committee on Banking, Finance, and Insurance, and the Senate Committee on Transportation and Housing within 180 days of the close of the pool's fiscal year. If, in the period of time since the last submittal required by this subdivision, any of the following has occurred, the transmittal letter accompanying the annual audited financial statement and most recent actuarial review shall so indicate and shall provide a brief description of each matter:

(1) There has been a change to the pool's plan of financing, management, or operation, including any material amendment to any of those plans.

(2) A claims audit report has been filed with any regulatory body with respect to the pool.

(3) A report of examination issued by any regulatory body with respect to the pool has been received.

(4) There has been a material change in the scope of the regulation of the pool by other states in which the pool operates.

13903. All participating affordable housing entities in any insurance pool, established pursuant to this division, are required to agree to pay premiums or make other mandatory financial contributions, as determined by the governing board, provided for by the insurance pool arrangement, that are necessary to ensure a financially sound risk pool.

13904. Any insurance pool, established pursuant to this division, shall not insure against any liability that may be insured against pursuant to Division 4 (commencing with Section 3200) of the Labor Code.

13905. Nothing in this division shall be construed to authorize an affordable housing entity to pay for, to insure, to contract for payment of, or to provide for payment for, any part of a claim or judgment against an employee of the affordable housing entity for punitive or exemplary damages.

13906. For the purpose of this division, "affordable housing" means housing developments in which some of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

13907. For the purpose of this division, an “affordable housing entity” means any of the following:

(a) A housing authority created under the laws of this state or another jurisdiction and any agency or instrumentality of a housing authority, including, but not limited to, a legal entity created to conduct a self-insurance program for housing authorities that complies with Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(b) A nonprofit corporation organized under the laws of this state or another state that is engaged in providing affordable housing.

(c) A partnership, general or limited, or limited liability company that is engaged in providing affordable housing and that is affiliated with a housing authority described in subdivision (a) or a nonprofit corporation described in subdivision (b) if the housing authority or nonprofit corporation has one or more of the following:

(1) A financial or ownership interest in the partnership or limited liability company or the right to acquire that interest.

(2) The power to direct the management or policies of the partnership or limited liability company.

(3) A contract to lease, manage, or operate the affordable housing owned by the partnership or limited liability company.

Approved _____, 2010

Governor